

REMARKS

Favorable consideration and allowance are respectfully requested for claims 1-2, 7-8 and 13-14 in view of the foregoing amendments and the following remarks. Claims 3-6, 9-12 and 15-18 are cancelled by this amendment.

The rejection of claims 3-6, 9-12 and 15-18 for obviousness type double patenting is respectfully traversed. As indicated above, these claims are cancelled thereby rendering this rejection moot.

The rejection of claims 1-18 under 35 U.S.C. § 112 as being indefinite, is respectfully traversed. Claims 1-2, 7-8 and 13-14 are now pending in this application and are directed to different methods. Each of the pending claims recites the step of “administering”. Accordingly, no claim is pending that does not include an active step.

Claim 13 is amended to clarify how the sentinel lymph node is located. In particular, the claim recites the step of detecting fluorescence with a fluorescent imaging system. Support for this amendment may be found in the specification, for instance, in the first paragraph on page 17.

The claims are amended to recite “photodynamic therapy” rather than “PDT” as suggested in the recent Office Action.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

The rejection of claims 5, 6, 11, 12, 17, 18 under 35 U.S.C. § 101 is respectfully traversed. As indicated above, these claims are canceled, rendering this rejection moot.

The rejection of claims 1-18 under 35 U.S.C. § 102 over Hikida (US Patent No. 6,063,777) is respectfully traversed.

The Office Action offers no explanation as to why claim 1-2, 7-8 and 13-14 were included in this rejection. Indeed, the cited reference does not teach that the compounds described therein might be at all useful for treating the indications recited in claims 1 and 7, namely rheumatoid arthritis and inflammatory keratosis. Nor does the reference describe that the compounds might be useful in determining the location of a sentinel lymph node and the presence of cancer metastasis as is recited in claim 13. Indeed, the Office Action states this explicitly on page 7, in the first full paragraph. Further, the claimed treatment methods are not inherently achieved whenever the compounds are administered. Rather, the claimed conditions are only treated when the compounds are administered to a patient suffering from the claimed conditions. Accordingly, the reference does not describe the presently claimed treatment methods and reconsideration and withdrawal of this rejection are respectfully requested.

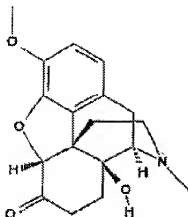
The rejection of claims 1-18 under 35 U.S.C. § 103 over Hikida (US Patent No. 6,063,777) in view of Levy is respectfully traversed.

As indicated above, the Office Action is correct that Hikida does not describe that the compounds might be useful in determining the location of a

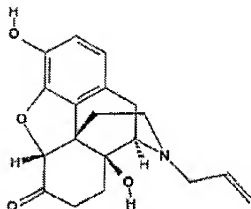
sentinel lymph node and the presence of cancer metastasis or treating rheumatoid arthritis or inflammatory keratosis.

Levy discusses photodynamic therapy and describes particular photosensitizers for which there “some evidence” that photodynamic therapy “may have efficacy.” See page 14, commenting on Table 1. However, Levy does not mention that the compound recited in the present claims would be useful in the claimed methods. Nor does Levy demonstrate that photosensitizers are interchangeable.

In the pharmaceutical arts, minute structural changes can result in vast and unpredictable differences in pharmacological action. Even closely related compounds may exhibit different mechanisms of action. This can be readily seen by comparing the structures of, for example, oxycodone and naloxone. The replacement of the N-methyl group of oxycodone by an N-allyl moiety in its phenol derivative (naloxone) changes an opioid receptor agonist (oxycodone) to an opioid receptor antagonist (naloxone).

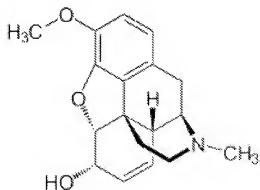
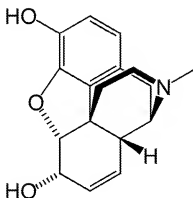


oxycodone



Naloxone

Another well known example illustrating how minute structural changes can result in significant differences in pharmacological activity is observed with morphine and codeine. The highly potent opioid receptor agonist morphine, which is used as a potent analgesic, can be converted into the antitussive agent codeine by introducing a methyl group to the phenolic hydroxy group in morphine.



Thus, even minute changes in chemical structure can yield large differences in physiological activity. As a result of this reality, the skilled artisan would not understand from Levy's description that the compounds of the claimed invention would necessarily be operative in the claimed methods.

Table 3 of Levy lists a variety of photosensitizers and a similar variety of indications - with only a few of the photosensitizers sharing the same indication. This listing shows the skilled artisan that the photosensitizers are not interchangeable. It is not simply the case that any photosensitizer would be suitable for an indication associated with another photosensitizer. Absent some persuasive evidence that photosensitizers are all interchangeable, the skilled artisan would simply not expect that, for instance, any given photosensitizer is suitable for treating any indication that is effectively treated with another photosensitizer.

Further, the Office Action simply concludes, without any support, that it would be obvious to perform the method of claim 13. A proper obviousness rejection requires the Examiner to articulate a convincing rationale as to what would lead a person skilled in the art to depart from that which is already known in the prior art. In the present instance, no such rationale has been offered, other than the conclusory assertion that the invention would be obvious. Reviewing the proposed combination of references, there does not appear to be anything that would cause or even facilitate the skilled artisan in arriving at the invention of claim 13.

In sum, the skilled artisan knows that even compounds which are nearly identical can exhibit wide variation in physiological activity and effectiveness. This knowledge would steer the skilled artisan away from concluding that photosensitizers are universally interchangeable. Further, there is nothing in the proposed combination of references to persuasively demonstrate that photosensitizers are universally interchangeable. Similarly, the proposed combination of references does not suggest to the skilled artisan that the compounds recited in the present claims would be operative for the claimed methods. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

Conclusion

In view of the foregoing, prompt favorable action on this application is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 101512.55677US).

Respectfully submitted,

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